IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 4677 of 2004

AND

WRIT PETITION NO.4620 OF 2003

WRIT PETITION NO : 4677 of 2004

Between:

1 Syed Abdul Quddus Hussaini, S/o Mr.Syed Ghouse Mohiuddin Hussaini,
APSP Housing Corporation Ltd. Head Office, Hyderabad.
2 M.Ramesh Kumar, S/o Sanjeev Rao,
APSP Housing Corporation Ltd. Head Office, Hyderabad.
3 V.Ram Kumar, S/o Venkateswar Rao,
APSP Housing Corporation Ltd. Sangareddy, Medak District.
4 P.Sudershan Reddy, S/o P.Narayana Reddy,
APSP Housing Corporation Ltd. Head Office, Hyderabad.

..... PETITIONERS

AND

A.P. State Police Housing Corporation Limited, Represented by its Vice Chairman and Managing Director, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more in the nature of Writ of Mandamus directing the

respondent to consider the case of the petitioners for promotion to the post of Deputy Executive Engineer, in the existing vacancies without resorting to fill up the vacancies by Deputation and declare the action of the Respondent in proposing to fill up the vacancies on deputation as illegal, bad, and arbitrary.

Counsel for the Petitioner: MR.J.R.MANOHAR RAO

Counsel for the Respondent : MR.G.PEDDA BABU FOR R1

WRIT PETITION NO : 4620 of 2003

Between:

1. M.s.HARINATH, S/O.M.s.Ramarao,

38 YEARS, R/O.2-1460, NEHRUNAGAR, KADAPA

2. P.Umasankar Sastry, s/o.Satyanarayana Murty

38 years, r/o.Guntur.

2. T.Sivanarayana, s/o.T.Padmanabham,

39 years, R/o. Plot No.550/A, Sriramnagar Colony, Puppalaguda village,Rajenmdernagar Mandal, Ranga Reddy district.

..... PETITIONER

AND

A.P. State Police Housing Corporation Limited, Represented by its Vice Chairman and Managing Director, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, in the nature of mandamus declaring the action of the respondent in filling up the posts of Deputy Executive Engineers on deputation

without considering the case of eligible candidates in service for promotion to the vacancies of Deputy Executive Engineers, as arbitrary, illegal and contrary to service regulations.

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondent No.: MR.G.PEDDA BABU

The Court made the following :

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.4622 OF 2003

AND

WRIT PETITION NO.4677 OF 2004

COMMON ORDER

At the interlocutory stage, both the counsel submitted that the writ petitions themselves could be disposed finally.

These writ petitions are filed seeking a writ of mandamus declaring the action of the respondent in filling up of the posts of Deputy Executive Engineers on deputations basis from other departments without considering the case of the eligible inservice candidates in the Corporation for promotion to the existing vacancies of Deputy Executive Engineers as arbitrary, illegal and contrary to the service regulations.

According to the petitioners, they are Diploma holders in Engineering and joined the services of the respondent-Corporation as Trainee Assistant Engineers in the year 1986. After successful completion of training, their services were regularized with effect from January,1988. They have completed morethan 15 years of service as Assistant Engineers. The respondent has cadre strength of 40 Deputy Executive Engineers including one post of Deputy Executive Engineer (Electrical). Out of which, 25 posts are sanctioned by the Government under various Government orders and 15 posts are created by the respondent through its Board resolution from time to time in view of the necessity. The posts thus created by the Board of the respondent Corporation are in existence since long time and infact the respondent wrote to the Government of Andhra Pradesh for necessary approval, though it is not required under law. While so, whenever there is a need, respondent is taking persons from outside, on deputation basis. One such letter is dated 5.2.2004, which was addressed to the Engineer-in-Chief, I & CADD Department, Hyderabad requesting the Chief Engineer to spare the services of few named Deputy Executive Engineers to work in the Corporation on deputation basis for a period of one year. The case of the petitioners is that though they are eligible for being promoted to the post of Deputy Executive Engineer, their cases are not being considered and the cases of outsiders are being considered. Therefore, the action of the respondent in getting deputations as Deputy Executive Engineers into the Corporation and denying the promotion to the petitioners as arbitrary and illegal.

A detailed counter affidavit has been filed by the Managing Director of A.P.State Police Housing Corporation. It is stated that permanent cadre strength of Deputy Executive Engineers sanctioned in the Corporation is only 24 and not 40 as contended by the petitioner. That one post of Deputy Executive Engineer is a Supernumerary post created on account of absorption of one Deputy Executive

Engineer belonging to A.P. Construction Corporation. The remaining 15 posts have been created by the Board, from time to time, to be operated on temporary basis depending upon the work load. Further, it is admitted that the Corporation has sent a proposal to the Government for enhancing the cadre strength of Deputy Executive Engineers to 40 posts, but approval has not been accorded. Therefore, the permanent cadre strength, as of now, is only 25 and not 40. Insofar as, 25 posts are concerned, they are being filled up by the eligible persons in the cadre of Assistant Executive Engineers/Assistant Engineers, whereas for the remaining 15 posts, the Corporation wants to take people on deputation. Since these posts are temporary, the existence of which depends upon the workload. Taking officers on deputation against these posts is administratively convenient, since the officers on deputation can be repatriated soonafter the completion of their work or on completion of their deputation period.

Further, it is contended that filling the post of Deputy Executive Engineer on deputation, in no way jeopardizes the interest of the Assistant Executive Engineers/Assistant Engineers, including the petitioners, since the deputationist can be repatriated at any time and would be repatriated no sooner than the Corporation is in a position to consider the cases of the promotions of departmental candidates. It is also contended on behalf the respondent that if the departmental people like the petitioners are promoted to the temporary posts, they cannot be reverted whenever there is no work. It is unfortunate that such a stand is taken by the respondent. However, it is equally difficult for the Corporation, if any deputationist seeks absorption by approaching this Court. In fact one such case is mentioned at para-3 of the Counter, where a person who was on deputation from A.P. Construction Corporation, was made to be absorbed in view of the orders passed by this Court. It is not the case of the respondent that the petitioners are not entitled for being promoted to the post of Deputy Executive Engineers. Their case is that these 15 vacancies are temporary vacancies, therefore making temporary promotion from in-service candidates would create some problems while reverting them to the post of Assistant Executive Engineers/Assistant Engineers. Such a stand taken by the respondent is unheard in the annals of service jurisprudence. It is always open for the respondent to consider all the eligible persons even for temporary promotion by making it clear that their promotion would be temporary to the said post of Deputy Executive Engineer, i.e., to the 15 temporary posts, and would be continued as long as the work is available and they can be reverted at any time without assigning any

reason. No Court can interfere into a reversion, which is made for want of vacancy. Therefore, the apprehension of the respondent that promotion of the inservice candidates to the temporary posts would create some problems is misconceived.

For the foregoing reasons, the writ petitions are allowed as prayed for. No order as to costs.

24.11.2004.

mdaa.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Wednesday, the 24th day of November, two thousand and four.

Copy to:

1. The Vice Chairman and Managing Director, A.P. State Police Housing Corporation Limited, Hyderabad.

2. Two C.D.copies.